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/Scott A. Stinebruner/ _____ June 19, 2007
Scott A. Stinebruner, Reg. No. 38,323 Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul Reuben Day et al. Art Unit: 2167
Application No.: 10/754,010 Examiner: Kimberly M. Lovel
Filed: January 8, 2004
For: METHOD AND SYSTEM FOR A SELF-HEALING QUERY ACCESS
PLAN

RESPONSE AFTER NON-FINAL REJECTION

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is submitted in reply to the Office Action dated June 4, 2007, within the three-month period for response. Reconsideration and allowance of all pending claims are respectfully requested.

In the subject Office Action, claims 1, 3-8, 10-16 and 18-21¹ were rejected under 35 U.S.C. § 103(a) as being unpatentable over the article "Efficient Mid-Query Re-Optimization of Sub-Optimal Query Execution Plans by Kabra et al. in view of U.S. Patent Application Publication No. 2005/0097078 by Lohman et al.

Applicants respectfully traverse the Examiner's rejections to the extent that they are maintained.

Now turning to the subject Office Action, and in particular the art-based rejections, Applicants respectfully submit that neither Kabra nor Lohman, alone or in combination,

¹ The Examiner lists claim 1, 3-8, 9-16 and 18-21 as being rejected under 35 U.S.C. § 103(a) in paragraph 4 of the Office Action; however claim 9 was canceled in Applicants' previous response on March 9, 2007.

discloses or suggests all of the features set forth in the rejected claims, most notably those of independent claims 1, 7, 12, 13, 15 and 16.

Nonetheless, even if these references did arguably suggest all of the features of any of Applicants' claims, Lohman is not properly citeable against the present application in an obviousness context pursuant to 35 U.S.C. §103(c). MPEP 706.02(l) sets forth the requirements for excluding a reference under 35 U.S.C. §103(c):

- (1) the reference is only citeable as prior art against a claimed invention under 35 U.S.C. §102(e), (f) or (g)²; and
- (2) the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

In this case, the filing date for the present application (January 8, 2004) is prior to the publication date of Lohman (May 5, 2005), and as such, the reference is citeable against the present application only under 35 U.S.C. §102(e). Furthermore, the present application, as well as Lohman, were, at the time the invention of the present application was made, both assigned, or subject to an obligation of assignment, to International Business Machines Corporation. As further evidence of such assignment, Applicants direct the Examiner's attention to the USPTO assignment records, and in particular to Reel/Frame 014880/0916 (for the present application) and Reel/Frame 014636/0320 (for Lohman), both of which establish a common ownership in International Business Machines Corporation.

As Lohman may not be applied against the present application in an obviousness rejection, Applicants respectfully submit that the Examiner's rejections (which are all based upon 35 U.S.C. §103(a)) should now be withdrawn. Reconsideration and allowance of claims 1, 3-8, 10-16 and 18-21 are therefore respectfully requested.

² 35 U.S.C. §102(e) art is excluded only for applications filed after November 29, 1999. The present application, filed on January 8, 2004, is after this date.

In summary, Applicants respectfully submit that all pending claims are novel and non-obvious over the prior art of record. Reconsideration and allowance of all pending claims are therefore respectfully requested. If the Examiner has any questions regarding the foregoing, or which might otherwise further this case onto allowance, the Examiner may contact the undersigned at (513) 241-2324. Moreover, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,

June 19, 2007
Date

/Scott A. Stinebruner/
Scott A. Stinebruner
Reg. No. 38,323
WOOD, HERRON & EVANS, L.L.P.
2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
Telephone: (513) 241-2324
Facsimile: (513) 241-6234